Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 2001

NELSON FERNANDES, et al,

Petitioner,

v.

SPARTA TOWNSHIP COUNCIL, et al,

Respondent.

On Petition for Writ of Certiorari
Of The Supreme Court of New Jersey

Nelson Fernandes – Pro se
9 Fox Run
Denville, N.J. 07834

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QUESTIONS PRESENTED

1. Was petitioner denied due process and equal protection of the law. And did any of that conduct violate 42 U.S.C.A. 1983, 1985, constitute a bias, or interfere with petitioner's right of self-representation.
2. Did the judge's actions constitute an extra-judicial predisposition, a custom, an act in furtherance of a silent conspiracy based on a known duty, a violation of petitioner's right to discovery first, and a violation of court rules, which require leave to appeal to determine if the judge should be disqualified.
3. Did Sparta's attorney violate his discovery duty or interfere with petitioner's right of self-representation by requesting a conference without filing a motion or memorandum or otherwise completing discovery.

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Statement on the Orders Entered

Of the orders listed and described in Petitioner's Appendix, the following are pertinent to this petition;

Law Div. Order denying disqualification – PA G

Law Div. order amending the complaint based on the extra-judicial predisposition of the judge – PA K

App. Div. denied leave to appeal – PA B, C, E, I

Sup. Ct. denied leave to appeal – PA A and D

Statement of the Basis for Jurisdiction

The Supreme Court denied leave to appeal collateral orders.[1] The first was a disqualification motion, which requires an appellate review.[2] The second involves an extra-judicial bias [3] and custom, [4] which proves two types of structural errors. Both required disqualification in order to have a trial before an impartial judge.[5] This Court must interfere since the foregoing created extraordinary circumstances.[6] 28 U.S.C.A 1257, 1291, 2101, 2104, 2106.

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[1] Lauro Lines v. Chasser et al., 490 U.S. 495 (1989).

[2] Liteky v. U.S., 510 U.S. 540, 563 (1994).

[3] U.S. v. Grinnell Corp. et al., 384 U.S. 563 (1966).

[4] Myra Jo Collins v. City Harker Heights, 112 S. Ct. 1061.

[5] Ward v. Village Monroeville, 409 U.S. 57 (1972).

[6] Middlesex County Ethics Comm. v. Garden State Bar Assoc. et al., 457 U.S. 423 (1982).

Statement of the Case

The Supreme Court denied petitioner due process and equal protection by denying leave to appeal; the recusal motion and the extra-judicial order based on a custom.

After the judge denied petitioner's recusal motion, he entered another collateral order [7] amending the complaint in violation of numerous court rules based on an extra-judicial predisposition[8] and custom that is **"separable from, and collateral to, rights asserted in the action."** His opinion (PA-L) was based on bias not on a **"study of the depositions and briefs"** since none were filed. [9]

Amending the complaint based on a letter from Sparta's attorney (PA-Q) constitutes a silent conspiracy in violation of 42 U.S.C. 1985, in view of their duty to see that discovery is completed. This conduct proves the judge is biased before trial [10] and interfered with petitioner's right of self-representation. These actions are a custom that denies due process in a conference intended to deliver the record before discovery starts, which violates 42 U.S.C. 1983. [11]

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[7] Lauro Lines v. Chasser et al., 490 U.S. 495 (1989).

[8] Berger v. U.S., 255 U.S. 22, 31.

[9] U.S. v. Grinnell Corp. et al., 384 U.S. 563 (1966).

[10] Ward v. Village Monroeville, 409 U.S. 57 (1972).

[11] Myra Jo Collins v. City Harker Heights, 112 S. Ct. 1061.

I - Reasons for Granting the Petition

The authorities and facts of record cited throughout this petition are part of every reason for granting it.

1. The Supreme Court's Denial of Due Process, Equal Protection & Abuse of Discretion

Granting leave is within the supreme court's discretion.[12] That court has granted leave to appeal the disqualification of counsel, [13] which it denied in the previous motion for leave in violation of due process and equal protection. It also granted leave; for a denial of a motion to dismiss, which it also denied, [14] and to replace a prosecutor before trial, stating the same applies to biased judges. [15]

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[12] "Granting leave for interlocutory appeal should be within our exclusive authority as an exercise of our discretion "in the interest of justice," R. 2:2-4." Taylor v. General Electric Co., 208 N.J.Super. 207 (App.Div. 02/13/1986).

[13] "The issue on this appeal is disqualification of counsel. Our decision turns on an attorney's duties . . . to avoid even the appearance of impropriety, DR 9-101. . . . We granted leave to appeal, . . . to address this question." Reardon v. Marlayne Inc., 83 N.J. 460, 465 (N.J. 1980).

[14] "We granted leave to appeal to decide whether the trial Judge improperly denied defendant's motion to dismiss plaintiff's complaint." Byrnes v. Landrau, 326 N.J.Super. 187 (App.Div. 11/24/1999).

[15] "Of course, the defendant has **a right to a fair trial before an impartial Judge and . . prosecutor** . . . The Appellate Division granted leave to appeal . . finding that Hedesh had a conflict of interest. . . directed the municipal

That court also held that judges should not sit in **"any causes where their objectivity and impartiality may fairly be brought into question"** or is **"hurtful to the judicial system."** [16] Using "litigants" [17] and "any causes" [18] shows it is applicable to this litigation. This Court accepts Black's Law Dictionary definitions, unless "it conflicted

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court to order the municipal prosecutor to prosecute the complaints. . . We hold . that Hedesh should not . prosecute Storm." State v. Storm, 141 N.J. 245 (1995).

[16] It is vital that justice be administered not only with a balance that is clear and true but also with such eminently fair procedures that the **litigants** and the public will always have confidence that it is being so administered. See Frankfurter, J. in Offutt v. United States, 348 U.S. 11, 14, 75 S. Ct. 11, 13, 99 L. Ed. 11, 16 (1954): "justice must satisfy the appearance of justice." To that end judges must refrain from engaging in any conduct which may be hurtful to the judicial system or from sitting in **any causes** where their objectivity and impartiality may fairly be brought into question." State v. Deutsch, 34 N.J. 190, 207-08 (1961).

[17] "A "litigant" is defined as "[a] party to a lawsuit; one engaged in litigation; usually spoken of active parties, not of nominal ones." Black's Law Dictionary 841 (5th ed. 1979)." Brande M. West Through Her Guardian AC Litem v. Tilley, 461 S.E.2d 1, 120 N.C.App. 145 (N.C.App. 09/05/1995).

[18] Black's Law Dictionary (6th ed), p 221 defines "cause" "[a]s a reason for an action." Buchanan v. City Council of Flint, 586 N.W.2d 573 (Mich.App. 09/11/1998).

Black's Law Dictionary defines "cause of action" as "the fact or facts which give a person a right to judicial redress or relief against another." Benoit v. Allstate Ins.Co., 751 So.2d 423 (La.App. Cir.5 01/25/2000).

with our precedents" [19] The court rules also allows a motion for disqualification **"before trial."** [20] Our appellate courts have a duty to provide an appeal to determine if they should order recusal no matter what the source is for a disqualifying predisposition after a judge denies a disqualification motion. *Id.* This is consistent with the holdings of Magill [21]

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[19] Buckhannon Board & Care Home, Inc. v. W.V. Dept. of H. & H. Resources, No. 99-1848 (U.S. 05/29/2001).

[20] R. 1:12-2 provides "[a]ny party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification." **A motion for recusal may be granted for any "reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."** R. 1:12-1(f). **Such a motion must "be made before trial** or argument." . . . The disposition of the motion is, at least in the first instance, entrusted to the "sound discretion" of the trial judge whose recusal is sought. . . . In construing the analogous federal statute on judicial disqualification, Justice Kennedy stated in a concurring opinion that **"[i]f through obduracy, honest mistake, or simple inability to attain self knowledge the judge fails to acknowledge a disqualifying predisposition or circumstance, an appellate court must order recusal no matter what the source."** Liteky v. U.S., 510 U.S. 540, 563, (1994) (Kennedy, J., concurring). Panitch v. Panitch, No. A-6982-99T3F (A.D. 2001).

[21] **"A party dissatisfied with a denial of a recusal motion may appeal . . we do not decide whether a recusal motion can be made other than in a pending case for the purposes of recusal from that case alone.** Magill v. Casel, 238 N.J.Super. 57 (A.D. 1990).

Even if the supreme court acted pursuant to its policy to save judicial resources [22] and reverses after trial,[23] it still means petitioner was denied his right to an impartial judge in the first instance [24] and was deprived of a single action.[25]

The orders show disqualification was denied, as was leave to appeal. The judge then amended the complaint without a motion or memorandum (R.4:25(b)(8)) and without petitioner's agreement (R. 4:25-1(b)), in violation of petitioner's right to discovery,[26] which constitutes a disqualifying extra-judicial bias. [27] These blatant violations

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[22] "The interruption of the litigation at the trial level . . disrupts the entire process and is wasteful of judicial resources." Hallowell v. American Honda Motor Co., 297 N.J.Super. 314 (App.Div. 01/31/1997).

[23] "A limited class of fundamental constitutional errors is so intrinsically harmful as to require automatic reversal without regard to their effect on a trial's outcome. Such errors infect the entire trial process and necessarily render a trial fundamentally unfair. . . (biased trial Judge) (denial of self-representation .)." Neder v. U.S., 527 U.S. 1, (U.S. 1999) (Structural error obviates the need to prove prejudice @7).

[24] Ward v. Village Monroeville, 409 U.S. 57 (11/14/1972) (". . **it is of no constitutional relevance that petitioner could later be tried de novo in another court, as he was entitled to an impartial Judge in the first instance.**")

[25] Schlossberg., 15 N.J. 360, 369-70 (N.J. 1954).

[26] "Our rules permit full discovery, and the pretrial conference is designed to compel it." Starr v. Berry, 25 N.J. 573 (N.J. 01/20/1958).

[27] Berger v. U.S., 255 U.S. 22, 31.

of rules proves bias under NJ law. [28] Violating court rules to deny the right to be heard also violates Canon 3. [29]

In the leading case, the supreme court held the bench and bar responsible for discovery being completed. [30] But, Sparta's attorney and the judge knowingly violated this duty and R. 4:25-1, which constitutes a denial of due process. (*Id.)* The judge knew he was dismissing claims without discovery, (PA-M) and knew no record was presented.

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[28] **"An error might be sufficiently blatant, and so lacking in an alternative, good faith explanation that the error would support a charge of bias.** State v. Marshall, 690 A.2d 1, 148 N.J. 89 (1997).

[29] "This Canon also directs that a judge accord to every person who is legally interested in the proceeding **the full right to be heard according to the law."** In re Yaccarino, 502 A.2d 3, 101 N.J. 342 (N.J. 12/27/1985).

[30] " . in the leading case of Schlossberg v. Jersey City Sewerage Auth., 15 N.J. 360, 371 (1954). Justice Brennan, speaking for a unanimous court, said that **the role of our discovery procedure "in the attainment of the just and proper disposition of an action is not less, but if anything more, important than that of the trial itself, and bench and bar share jointly the responsibility to govern the prosecution of the action accordingly." . . The trial court steadfastly refused to apply the rules established for the control of our bench and bar . . This was an unjustifiable trespass upon the rights of defendants Capasso and amounted to an arbitrary and discriminatory denial to them of the protection of our rules. In short, there was a denial of due process.** Band's Refuse Removal Inc. v. Bor. of Fair Lawn, 62 N.J.S. 522, 551-2 (A.D. 1960).

His extra-judicial misconduct makes this is a conspiracy [42 U.S.C. 1985]. Griffin, 403 U.S. 88 (1971). To justify his extra-judicial violation of court rules, the judge relaxed the rules (R.1:1-2) in violation of R. 4:25-1, which is mandatory based on its use of "shall". (PA-L)

Denying a recusal motion then denying petitioner the right to be heard followed by a denial of leave by the supreme court in each instance is a refusal to consider the disqualification of a particular judge from participating in his case based on court rules recognized by this Court. [31]

For all of the above stated reasons, the NJ supreme court abused its discretion, denied petitioner; procedural due process and equal protection by not granting leave, and refused to apply the law in effect at the time of its decision.[32]

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[31] "It is conceivable that there might be a judge in the State who, in an effort to curry favor or to avoid administrative transfer to a less desirable assignment, would decide the case with an eye to the supposed attitudes of his superiors in the judicial hierarchy. But even if such a judge were assigned to hear Helfant's case, the right to a fair trial would be protected by the **New Jersey rule that permits a defendant to disqualify a particular judge from participating in his case.** See New Jersey Court **Rules 1:12-1 to 1:12-3**." Kugler v. Helfant, 421 U.S. 117, f.10 (04/28/75).

[32] "**An appellate court must apply the law in effect at the time it renders its decision . . . this same reasoning has been applied where the change was constitutional, statutory, or judicial.** Thorpe v. Housing Auth. City Durham, 393 U.S. 268, 89 S. Ct. 518 (01/13/69).

2. The Judge Violated Due Process & Equal Protection

A judge with decades of experience hearing in lieu of prerogative writs for two counties knows or should know; R. 4:25-1(a) "pretrial conferences **shall** [mandatory [33]] be held in all . . actions brought in lieu of Prerogative Writs." And R. 4:25-1(b) "the court **shall** make a pretrial order to be dictated in open court at the conclusion of the conference and signed forthwith by the judge and attorneys, which **shall** recite specifically" (2) "admissions or stipulations" (6) "no amendments of pleadings **shall** be granted . which would justify . **further discovery**." (8) "If a ruling is sought on any such legal issue, the matter **should** be set forth with directions that formal motion be made thereon at a later time." [34] (13) "any other matters which have been agreed upon in order to expedite the disposition of the case."

By relaxing these rules, R.1:1-2,[35] the judge violated due process since they are mandatory. Moreover, he acted like an advocate. Band's, 62 N.J.S. 522, 549 (A.D. 1960).

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[33] "We conclude that the words 'whenever' and **'shall' denote a mandatory provision.**" Murnick v. City of Asbury Park, 95 N.J. 452, 461 (N.J. 02/27/1984).

[34] Nicholson v. Spangenberg, 163 N.J.S. 128, 131 (1978).

[35] "See R. 1:1-2 (**"Unless otherwise stated, any rule may be relaxed or dispensed with**, . . ." etc.)." Magill v. Casel, 238 N.J.Super. 57 (A.D. 01/22/1990).

The judge willfully violated these rules and his duty to abide by the canons of judicial ethics 1, 2, and 3 since he sua sponte acted on his extra-judicial bias. [R. 1:18].[36]

Sparta's letter (PA-Q) is not a memoranda that can justify the order,[37] (R.4:25-1(b)(8)) which petitioner did not sign (PA-X) (R. 4:25-1(b)) and was prepared by an attorney contrary to court rule R. 4:25-1(b). Petitioner was denied discovery (R.4:25-1(b)(2)&(6) [38] and his right to be heard on his claims since the case began. (R.4:25-1(b)), which proves bias and blatantly interferes with petitioner's right of self-representation, which warrants leave to appeal.

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[36] "Such is the purpose of the rule of court (R. 1:18, originally R. 8:13-5(a) (1948)), which subjects all judges, including municipal court judges, to the strictures of the Code of Judicial Conduct: "It shall be the duty of every judge to abide by and to enforce the provisions of * * * the Canons of Judicial Ethics," In re Yengo, 72 N.J. 425 (1977).

[37] "It has been established that where the only question involved at the pretrial conference is one of law and the parties are afforded a full opportunity to be heard on the question, **the court may grant summary judgment even without a formal motion** therefor. Sheild v. Welch , 4 N.J. 563 (1950). At the pretrial conference the court had before it the complaint, the answer, plaintiff's **answers to interrogatories**, and the **factual statements contained in the memoranda submitted to the court by counsel** for the respective parties pursuant to the requirements of R.R. 4:29-3. Murphy v. Kelly, 28 N.J.Super. 266, 267-8 (A.D. 1953).

[38] "Our rules permit **full discovery**, and the pretrial conference is designed to compel it." Starr v. Berry, 25 N.J. 573 (N.J. 01/20/1958).

A "reasonable person" [39] with knowledge of the facts would expect an experienced judge to know when he violated court rules and acted in an extra-judicial manner. The judge's actions in this case supports the inference that he was currying favor with the appellate courts, which then creates the appearance of reciprocating by repeatedly denying leave. Kugler v. Helfant, 421 U.S. 117, f.10, (1975).

The judge's disqualifying extra-judicial bias and numerous violations of court rules makes a trial pointless, since an appellate court would have to reverse [Neder v. U.S., 527 U.S. 1, (1999)] and disqualify the judge for bias [40] and interfering with petitioner's right of self-representation. Denying petitioner his right to discovery and the right to be heard in violation of court rules also deprives petitioner of an **"expeditious determination in a single action of the ultimate merits".** [41] These extraordinary circumstances require this Court to interfere. [42]

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[39] ("Recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in a case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge.'" Andrew Robertson v. Ca., 498 U.S. 1004 (12/03/90).

[40] Ward v. Village Monroeville, 409 U.S. 57 (1972).

[41] Ajamian v. Schlanger , 14 N.J. 483 (1954).

[42] Middlesex County Ethics Comm., 457 U.S. 423 1982).

3. A Custom that Violates 42 U.S.C. 1983 and 1985

Sparta's attorney violated R.4:25-1by not filing a motion or delivering the record.[43] The judge violated it by dismissing claims without a motion based on an extra-judicial bias. Since, both are required to allow discovery first, [44] their violation of the duty to complete discovery (*id.*) shows each knew the other violated R. 4:25-1 making this a silent conspiracy to deny due process. [42 U.S.C.1985] [45] It also constitutes a custom that violates 42 U.S.C.1983. [46]

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[43] "The normal procedure for **submitting the record of proceedings before a local agency to the Law Division is through a pretrial conference**, which is mandatory in all actions in lieu of prerogative writs. R. 4:25-1(a) . . This conference "should be noticed and held immediately after the answering pleading is filed, without waiting for the usual discovery period to run." City of Clifton v. Zweir, 36 N.J. 309, 327, 177 A.2d 545 (1962). Willoughby v. Planning Bd. of Twp. of Deptford, 306 N.J.Super. 266 (A.D. 1997).

[44] "The time for discovery proceedings is fixed by the rules . . **the scheduling of the pretrial conference is deferred until that period has elapsed**. . **The purpose is to assure that all parties may and will make the fullest exploration into the facts of their own and their adversaries' cases to the end that the pretrial conference shall truly serve its basic and essential functions** of isolating and specifying the factual and legal issues actually in controversy and of incorporating them in the pretrial order." Schlossberg v. Jersey City Sewerage Auth., 15 N.J. 360 (1954).

[45] Griffin v. Breckenridge, 403 U.S. 88 (06/07/71).

[46] "It is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or

Mr. Laddey's letter asking the judge to eliminate claims in order to reduce discovery proves; a willful and blatant discovery violation, [47] constitutes action pursuant to a known custom, and shows he knew the judge had the **"reputation of a man who can be reached".** [48] The judge's failure to address the discovery violation and his extra-judicial violation of the rules and canon 3 [49] proves a custom and his unfitness to hear "in lieu of prerogative writ" cases. [50] His conduct supports an inference of corruption. [51]

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acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Myra Jo Collins v. City Harker Heights, 112 S. Ct. 1061, 117 L. Ed. 2d 261, 60 U.S.L.W. 4182 (1992).

[47] Taylor v. Illinois, 484 U.S. 400 (1988).

[48] "A judge who does "favors" with his office is morally an embezzler. He is also a fool, for **a judge who plays a "good" fellow for even a few must inevitably be stained with the reputation of a man who can be reached.** In re Mattera, 34 N.J. 259, 275-76 (N.J. 02/20/1961).

[49] **"A magistrate can violate Canon 3 of the Judicial Code of Ethics by failing to adhere to court rules."** In The Matter Of Ozell Eplin, No. 20106, 1992.WV.13 (Sup.Ct.W.Va. 03/31/92).

[50] **"Unwillingness to follow the law or to protect the rights of those . . . appearing in front of him . . . do not represent an exercise of judicial independence."** In re Hammermaster, No. JD #15 (Wash.S.Ct.,En Banc 1999).

[51] Black's Law Dictionary, 5th. Ed. defines corruption as: "An act done with an intent to give some advantage inconsistent with official duty and the rights of others." City of Atlanta v. J.A. Jones Con., 398 S.E.2d 369 (S.C. 1990).

4. Grounds for This Court's Interference

Justice Scalia outlined the requirements for a collateral order, which applies to the circumstances in this case. Lauro Lines v. Chasser et al., 490 U.S. 495 (05/22/89).

(1) The judge's order was the result of an extra-judicial bias by ruling without a motion or memorandum, [52] and dismissing claims at a conference intended to deliver the record. These customs are **"separable from, and collateral to, rights asserted in the action"**.

(2) Petitioner **'lost, probably irreparably'** his right to an "**expeditious determination in a single action of the ultimate merits**", [53] since a trial by a biased judge requires reversal. Neder, 527 U.S. 1, (1999). Dismissing petitioner's claims without agreement or motion violates court rules [54]

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[52] U..S. v. Grinnell, 384 U.S. 563 (1966).

[53] ""Our rules of court provide a simple and flexible procedural framework designed and purposed for the just and **expeditious determination in a single action of the ultimate merits** of an entire controversy between litigants. **Each litigant has broad latitude to assert any ground of relief . . . and is provided with broad discovery and pretrial procedures by which he may obtain all the facts material to the positions of both sides and is allowed great freedom to form and reform his pleadings and the pretrial order accordingly.** Schlossberg v. J.C. Sewer. Auth., 15 N.J. 360, 369-70 (N.J. 1954).

[54] "R. 4:25-1 makes it crystal clear that trials must be held within the framework of the pretrial order. The rule, in

and interferes with petitioner's right of self-representation by denying him discovery on the arbitrarily dismissed claims. [55]

Petitioner's right to an impartial judge in the first instance [56] is also **"too important to be . . deferred until the whole case is adjudicated".**[57] Especially, when a judge with decades of experience in "in lieu of prerogative writs" denies petitioner's recusal motion then violates R. 4:25-1, which he is required to follow in every case. The supreme court held discovery to be more important than the trial [58]

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relevant part, **requires** the pretrial order to be **dictated in open court, signed by counsel** and the court, and it must recite: the **admissions or stipulations** of the parties . . and this shall limit the claims thereto at the trial." Muntz v. Newark City Hosp., 115 N.J.S. 273 (A.D. 1971).

[55] **"The introduction of additional issues or a shift of ground from those agreed upon may be made over timely and meritorious objection only as permitted by R.R. 4:29-1(b)(15) and 4:15-2** applicable to amendments offered after entry of the **pretrial order.**" Schlossberg v. J.C. Sewer. Auth., 15 N.J. 360, 370 (N.J. 1954).

[56] **"An impartial Judge in the first instance"** Ward v. Village Monroeville, 409 U.S. 57 (1972).

[57] Lauro Lines v. Chasser et al., 490 U.S. 495 (05/22/89).

[58] **"The role of our discovery procedure "in the attainment of the just and proper disposition of an action is** not less, but if anything **more, important than that of the trial itself, and bench and bar share jointly the responsibility to govern the prosecution of the action accordingly."** Schlossberg v. J.C. Sewer. Auth., 15 N.J. 360, 371 (N.J. 1954).

because the judge must make sure discovery has taken place [59] before dismissing claims by agreement or motion. (R.4:25-1). Entering the order and opinion on the merits in violation of the tenets of R. 4:25-1 and violating R. 1:1-2 without a motion, memorandum, or petitioner's approval proves the judge acted pursuant to **"an extra-judicial source"**, [60] which requires him to recuse himself. State v. Deutsch, 34 N.J. 190, 207-08 (N.J.1961) Hence, the appellate courts were required to grant leave to potentially **"order recusal no matter what the source."** [61]

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[59] "Our rules permit full discovery, and the pretrial conference is designed to compel it." Starr v. Berry, 25 N.J. 573 (N.J. 01/20/1958).

[60] **"The alleged bias and prejudice to be disqualifying must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.** Berger v. United States, 255 U.S. 22, 31. Any adverse attitudes that Judge Wyzanski evinced toward the defendants were **based on his study of the depositions and briefs which the parties had requested him to make.** What he said reflected no more than his view that, if the facts were as the Government alleged, stringent relief was called for. U..S. v. Grinnell Corp. et al., 384 U.S. 563 (06/13/66).

[61] Justice Kennedy stated in a concurring opinion that "[i]f through obduracy, honest mistake, or simple inability to attain self knowledge **the judge fails to acknowledge a disqualifying predisposition or circumstance, an appellate court must order recusal no matter what the source."** Liteky v. U.S., 510 U.S. 540 (1994).

The judge's refusal to disqualify himself after ruling pursuant to an extra-judicial bias was willful misconduct [62] and is hurtful to the judicial system. [63]

Based on all of the foregoing, the actions of the attorney, judge, and appellate courts have created "extraordinary circumstances", which requires interference in this pending state judicial proceeding. [64] The judge's bias and attorney's impropriety was clearly raised, which required the supreme court to grant leave to appeal based on the foregoing facts and authorities. That appeal should lead to the judge's orders being vacated, restoring petitioner's claims, discovery, and disqualifying a blatantly biased judge and the opposing counsel for his ethical violations.

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[62] "Removal . . requires misconduct flagrant and severe. That sanction is imposed rarely. Willful misconduct in office and willful misuse of office are examples of transgressions that warrant removal of a sitting judge. In re Williams, No. D-73 Sept. Term 2000 (N.J.2001).

[63] "To that end judges must refrain from engaging in any conduct which may be hurtful to the judicial system or sitting in any causes where their objectivity and impartiality may fairly be brought into question." State v. Deutsch, 34 N.J. 190, 207-08 (N.J. 02/06/1961).

[64] "Younger v. Harris, supra, and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." Middlesex County Ethics Comm. v. Garden State Bar Assoc., et al., 457 U.S. 423 (06/21/82).

5. Interfering with the Right of Self Representation

Petitioner was denied leave after the judge denied his motion to strike (PA-I) the answer, though no affidavit was filed to rebut petitioner's certification.[65] This led to the recusal motion and inference that the judge dismissed claims because the township was unable to rebut the certification.

Mr. Laddey's letter (PA-Q) [66] requests extra-judicial action to eliminate claims in order to reduce discovery without a motion or memorandum, making the judge's actions extra-judicial bias in the court. Mr. Laddey provides no injustice [67] or reason to avoid discovery. [68] So, relaxing the rules (R.1:1-2) violates these prerequisites.

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[65] "The affidavit challenging the answer was not contradicted or rebutted . . and **the pleading was properly struck, because there was no fact in dispute.**" Jasion v. Preferred Accident Ins. Co., 172 A. 367, (N.J. 1934).

[66] "the complaint is somewhat unclear . . I feel such a conference would be very helpful in **narrowing the issues and expediting the discovery process**.

[67] **R. 1:1-2** (allowing relaxation of Rules in **specifically alleged circumstances of inJustice**). State v. Afanador, 697 A.2d 529, 151 N.J. 41 (N.J. 07/23/1997).

[68] "The discovery rules were designed to eliminate, as far as possible, concealment and surprise in the trial of lawsuits to the end that judgments rest upon real merits of the causes and **not upon the skill and maneuvering of counsel.**" . . . ("If discovery rules are to have any meaningful effect upon calendar control and early Disposition of litigation, they must be adhered to unless, **for good cause shown, they are**

After requesting plaintiff's comments, (PA-N) the judge violates the law in f.1 (PA-M) which states R.4:25-1 is mandatory by relaxing it, which is a willful refusal to follow that law, and a denial of due process and equal protection based on f.2 proving "willful misconduct" [69] in f.3. Petitioner also pointed out that he was denied discovery contrary to the judge's duty in f.5. [70] Relaxing rules contrary to cited authorities is willful and **"so extreme as to display clear inability to render fair judgment."** [71] So, the judge's bias and refusal to follow the law violates Canon 1. [72]

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relaxed under R. 1:1-2."). Abtrax Pharmaceuticals Inc. v. Elkins-Sinn Inc., 139 N.J. 499 (N.J. 04/10/1995).

[69] Felton v. U.S., 96 U.S. 699, 702 (1878)("Doing or omitting to do a thing knowingly and wilfully, implies not only a knowledge of the thing, but a determination with a bad intent . . . ."

[70] "Absent such extraordinary circumstances, our cases and those of the Courts of Appeals hold that review of the granting or denial of discovery is not immediately reviewable . . " Douglas Oil Co. Ca. et al. v. Petrol Stops Northwest et al., 441 U.S. 211 (04/18/79).

[71] "A favorable or unfavorable preDisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts **adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment.**." Liteky v. U.S., supra.

[72] **"Unwillingness to follow the law or to protect the rights of those . . . appearing in front of him . . . do not represent an exercise of judicial independence."** In re Hammermaster, No. JD #15 (Wash.S.Ct.,En Banc 1999).

Hence, he should be removed. In re Williams, No. D-73 Sept. Term 2000 (N.J.2001).

The supreme court denied leave to appeal the motion to disqualify the judge and Mr.Laddey, and to report him for filing a false certification and misrepresenting case law in this case. The judge ruled (PA-G) that the motion was out of time, which is contrary to law, [73] and that Mr. Laddey didn't violate any "rule of ethics." Except, the judge's duty is to report violations, not rule on them.[74] (Canon 3)

Sparta's attorney and the judge have interfered with petitioner's "right of self-representation" repeatedly by violating "relevant rules of procedural and substantive law," [75] which makes this a structural error. Neder v. U.S.

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[73] "**We hold that the trial court has the inherent power, to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders at any time prior to the entry of final judgment.**" Johnson v. Cyklop Strapping Corp., 220 N.J.Super. 250 (A.D. 1987).

[74] "Appellate decisions reacting to cases involving attorney misconduct in the presence of the court seem to reinforce the view that **judges are obligated to report all wrongdoing to proper authorities.** State v. Ramseur, 106 N.J. 123, 323-324, 524 A.2d 188 (1987)

[75] "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." Faretta v. Ca., 422 U.S. 806, fn.46 (06/30/1975).

CONCLUSIONS

The judge's numerous rulings contrary to authority, then his extra-judicial predisposition based on Mr. Laddey's letter (PA-Q) supports an inference of bias and deliberate interference with petitioner's right of self-representation. His actions clearly proves the existence of a custom to pervert a conference to deliver the record into one used to deny due process and equal protection in violation of court rules, long standing case law, and constitutional principles.

These circumstances prove the need for discovery before the conference, as before. Presenting the record in the former manner, and completing discovery for additions, deletions, amendments, and dispositive motions prevents a conspiracy or custom to eliminate claims and deny discovery as a NJ Supreme Court previously realized. The former procedure prevents the potential for constitutional violations. It reinforces case law on procedures that are a half-century-old to end an unconstitutional custom here and possibly elsewhere. Clearly, this custom requires interference and to grant petitioner his right to appeal so the judge and attorney can be disqualified, the orders vacated, in order to proceed with discovery pursuant to due process and equal protection.

PETITIONER'S APPENDIX

A – S.C. Denial of Leave to Appeal Extra-judicial bias

B - A.D. Denial of Leave to Appeal Extra-judicial bias

C- A.D. Motion to File a Reply Granted

D – S.C. Denial of Leave to Appeal Recusal Motion

E – A.D. Denial of Leave to Appeal Recusal Motion

F – L.D. Order denying motion to strike Sparta's answer.

A) Sparta did not file a certification to meet petitioner's certification, which required the judge to strike it.

G – L.D. Order Denying Disqualification Motion of the judge and attorney, as well as reporting his misconduct.

H – A.D. Denial of Leave to Appeal Motion to Strike

I- A.D. Denial of Leave to Appeal

J- L.D. Order Denying Motion to Vacate the 4/26/2001 Order Based on judge's 4/26/01 opinion (PA- L)

K- L.D. Pretrial Conference Order of 4/26/01, which shows it was not based on any motion or memorandum

L – Judge's Opinion (Violates R.4:25-1 - mandatory)

A) First person comments reflects his personal bias

B) Acts like an advocate by sua sponte raising R.1:1-2 since no reason was provided to justify relaxing the rules.

C) Reasons given at conference does not mitigate the judge's extra-judicial bias by acting without a motion.

PETITIONER'S APPENDIX

D) The judge refers to dismissing the complaint sua sponte, which reflects his extra-judicial predisposition.

E) The judge avoids his violation of the case law cited by petitioner in the letter requested by the judge.

M –Petitioner Letter Requested by Judge (PA- N)

A- Pointed out Discovery was not Done.

B- Cited Authority on Judge's Discovery Duty

C- Cited Authority that R. 4:25-1 is Mandatory

N – Judge's Letter Asking for Petitioner's Comments before making his decision, though his opinion reflects a predisposition in spite of the cases cited by petitioner.

O – Attorney Offering to Prepare Pretrial Conference Order to limit Discovery, both of which Violate R. 4:25-1

P – L.D. Order Denying Petitioner's Motion, which conceals the fact that the motion was one to strike.

Q – Attorney's Letter Requesting a Conference

A- Invites Extra-judicial Misconduct by the Judge since it is not a motion or memorandum presented for the court's consideration.

B- He does not allege any injustice or good cause for avoiding discovery.

A

Nelson Fernandes, et al,	SUPREME CT of NJ
Plaintiff-Movants,	Sept. Term 2001, M-379/380
v.	51,968
Sparta Township Council, et al.	ORDER
Defendants-Respondants.	**Filed 11/15/01**

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal (M-379) is denied; and it is further

ORDERED that the motion for a stay pending appeal (M-380) is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice at Trenton, this 14 th. Day of November, 2001.

Signed;

Stephen Townsend

Clerk of the Supreme Court

B

Nelson Fernandes, et al, Superior Court of NJ

v. Appellate Division

Sparta Township Council, et al. Doc. # AM – 918 – 00T3

Motion # M-6110-00

Before Part: S

Judges: Newman and Fall

Filed 8/9/2001

Motion Filed: July 5, 2001 By: Nelson Fernandes

Answer(s) Filed: July 16, 2001 By: Sparta Township Council

Submitted to Court: August 6, 2001

ORDERED

This matter having been duly presented to the Court, it is on this 7 th. Day of August, 2001, hereby ordered as follows;

Motion by Appellant

- For Leave to Appeal Denied

- For Stay Denied

For the Court;

Richard Newman J.A.D.

C

Nelson Fernandes, et al,

v.

Sparta Township Council, et al.

Superior Court of NJ

Appellate Division

Doc. # AM – 918 – 00T3

Motion # M-6570-00

Before Part: S

Judges: Newman and Fall

Filed 8/9/2001

Motion Filed: July 18, 2001 By: Nelson Fernandes
Answer (s) Filed:
Submitted to Court: August 6, 2001

ORDERED

This matter having been duly presented to the Court, it is on this 7 th. Day of August, 2001, hereby ordered as follows;

Motion by Appellant

- To File a Reply to a Motion Answer Granted

For the Court;

Richard Newman J.A.D.

D

Nelson Fernandes, et al,	SUPREME CT of NJ
Plaintiff-Movants,	M-1423 Sept. Term 2000
v.	51,382
Sparta Township Council, et al.	ORDER
Defendants-Respondants.	**Entered 7/16/01**

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice at Trenton, this 12 th. Day of July, 2001.

Signed;

Stephen Townsend

Clerk of the Supreme Court

E

Nelson Fernandes, et al,	Superior Court of NJ
v.	Appellate Division
Sparta Township Council, et al.	Doc. # AM – 546 – 00T5
	Motion # 3683-00
	Filed 4/23/01

ORDERED

This matter having been duly presented to the Court, it is on this 12 th. Day of April, 2001, hereby ordered as follows;

The motion to file nunc pro tunc is granted.

The motion for stay and motion for leave to appeal are denied.

For the Court;

John E. Wallace Jr. J.A.D.

F

Nelson Fernandes, et al,	Superior Court of NJ
Plaintiff,	Law Division
v.	Doc. # MRS-L-3901-99
Sparta Township Council, et al.	Order Denying Motion
Defendants.	**Filed 2/4/01**

Ordered that plaintiff's motion for a stay pending appeal is denied. It is further ordered that **discovery shall go forward**.

Reginald Stanton
Judge of the Superior Court

Assignment Judge

G

Nelson Fernandes, et al,	Superior Court of NJ
Plaintiff,	Law Division
v.	Doc. # MRS-L-3901-99
Sparta Township Council, et al.	Order Denying Motion
Defendants.	**Filed 1/09/01**

The court denied the following in its entirety;

A) **Judge Stanton recusing himself**;

B) **Disqualifying Mr, Laddey and his firm from representing Sparta**;

C) Change of venue;

D) Certifying the issues raised for appeal;

E) Dismissing Sparta's answer as a sanction;

F) Entering a default judgment;

G) Vacate March 17, 2000 order;

H) **Strike Sparta's answer**;

I) Stay the matter pending appeal;

J) **Allow discovery to begin;**

K) Report Mr. Laddey to the ethics committee for filing a false certification.

(The judge hand wrote the following)

The motion is denied for the following reasons;

1. **The motion is out of time.**
2. More importantly, the decision embodied in the order of March 17, 2000 was and is correct for the reasons stated when that order was entered.
3. **Mr. Laddey and his firm have not violated any rule of ethics.**

Reginald Stanton

Judge of the Superior Court

H

Nelson Fernandes, et al,

v.

Sparta Township Council, et al.

Superior Court of NJ

Appellate Division

Doc. # AM – 657 – 99T1

Motion # M-5770-99

Before Part: B

Judge(s): Carchman, Lafelt

Filed 6/6/2000

ORDER

This matter having been duly presented to the Court, it is on this 4 th. Day of May, 2000, hereby ordered as follows;

Motion for Leave to Appeal Denied

For the Court;
Philip A. Carchman J.A.D.

I

Nelson Fernandes, et al,

v.

Sparta Township Council, et al.

Superior Court of NJ

Appellate Division

Doc. # AM – 657 – 99T1

Motion # M-4457-99

Before Part: B

Judge(s): Carchman, Lafelt

Filed 5/5/2000

ORDER

This matter having been duly presented to the Court, it is on this 4 th. Day of May, 2000, hereby ordered as follows;

Motion for Leave to Appeal Denied

For the Court;

Philip A. Carchman J.A.D.

J

Nelson Fernandes
9 Fox Run
Denville, N.J. 07834
(973) 627-2138

Nelson Fernandes, et al,	Superior Court of NJ
Plaintiff,	Law Div.- Morris County
v.	Doc. # MRS-L-3901-99
Sparta Township Council, et al.	Order
Defendants.	**Filed 6/16/01**

This Matter comes before this Court on plaintiff's motion Returnable June 8, 2001. This matter having been fully submitted on the papers and for good cause shown;

It Is on this 16 day of June, 2001:

Hereby ordered that the motion to vacate the order of April 26, 2001 is denied. That the order was appropriately entered for the reasons set forth in this Court's letter opinion of April 26, 2001.

Reginald Stanton, Judge of the Superior Court

K

Laddey, Clark & Ryan
Attorneys at Law
60 Blue Heron Rd.
Sparta, N.J. 07871
(973) 729-1880

Nelson Fernandes, et al,	Superior Court of NJ
Plaintiff,	Law Division
v.	Doc. # MRS-L-3901-99
Sparta Township Council, et al.	Order
Defendants.	**Filed 4/26/01**

This Matter having before the Court for a **pretrial conference** on March 28, 2000. Brian M. Laddey, Esq. Appearing on behalf of Sparta Township Council, Sparta Township Manager, and Sparta Township Engineer. Deputy Attorney General Brian Weeks, Esq. Appearing on behalf of the New Jersey Department of Environmental Protection and Nelson Fernandes, Esq., appearing pro se and **the Court having had the opportunity to review the pleadings filed and hear from counsel**, and the Superior Court of New Jersey Appellate Division having denied plaintiff's interlocutory appeal.

IT IS on this 26 day of Aprill 2001 ORDERED:

1. The Complaint shall be deemed to be a request to compel the Township of Sparta to acquire a fifty-foot buffer around the well and pay fair market value, as well as to compel the Township to take steps to close down or divert the drainage pipe.
2. The Township of Sparta shall have 35 days within which to respond to the Complaint as amended by this Order and **discovery shall proceed thereafter pursuant to the Rules of Court.**
3. Plaintiff's suit regarding the zone change is dismissed without prejudice. Plaintiffs are instructed to obtain the services of a Planner to support their request for a zoning change.
4. A copy of this Order shall be served upon all parties within seven (7) days of its receipt for defendants, the Township of Sparta.

Signed:
Hon. Reginald Stanton, A.J.S.C.

L

SUPERIOR COURT OF NEW JERSEY
MORRIS/SUSSEX VICINAGE
Reginald Stanton, Assignment Judge
Courthouse, PO Box 910
Morristown, New Jersey 07963-0910
(973) 285-6414

April 26, 2001

Mr. Nelson Femandes
Ms. Joan Femandes
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RE: Femandes v. Sparta Township Council:
Docket No. MRS-L-3901-99

Dear Mr. Femandes, Ms. Femandes, Mr. Laddey and Mr. Weeks:

I am enclosing herewith a copy of an Order which I am entering today. The Order reflects decisions which I made way back on March 28, 2000 at the pretrial conference which we held on that date. You will recall that I stated at that time that I would delay entry of an Order reflecting the decisions being made until there was a decision by the Appellate Division on an appeal which was then pending before it. That decision was rendered quite a while ago, but the matter did not actively come back to my attention until Mr. Laddey wrote to me on February 13, 2001. **Pursuant to that letter on February 13, 2001, Mr. Laddey sent to me the proposed Order reflecting the decisions made at the pretrial conference**, and it is that proposed form of Order which I have today signed.

I note that Mr. Femandes wrote to me on March 6, 2001 objecting to the proposed form of Order which Mr. Laddey submitted to me. **The major point of Mr. Femandes' objection**

was that the proposed Order was a Pretrial Order, but that it failed to follow the detailed provisions of Rule 4:25-l(b) with respect to the contents of a Pretrial Order and with respect to the signing of a Pretrial Order. Mr. Femandes is correct in pointing out that the Order which Mr. Laddey submitted and which I have now signed does not contain the 16 items set forth in Rule 4:21-l(b), and it also was not dictated in open court and signed in open court by the judge and the attorneys or parties.

I note at this point that the substantive reasons for the decisions contained in the Order which I am signing today were explained at great length on the record at the March 28, 2000 hearing. After I received Mr. Laddey's proposed form of Order and after I received Mr. Femandes' objections to it, I spent about an hour listening to the video tape of the March 28, 2000 pretrial conference. **I am satisfied that I fully explained the reasons for my decision at that time on the record in the presence of everyone at the conference,** and I am also satisfied that Mr. Laddey's proposed form of Order correctly reflects the rulings which I made at the conference.

With respect to Mr. Femandes' objections to the requirements of Rule 4:25-l(b) I note that the kind of Order reflected in that rule simply is too awkward and cumbersome to be useful in the present situation. That rule also calls for details that simply are not relevant to the proceeding which we have before us. I call your attention to Rule 1:1-2 which sets forth the basic principles to be applied in construing the Rules of Court. That Rule provides that the rules, in general, "shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." **Rule 1:1-2 further provides that, with exceptions which are not relevant here, "any rule may be relaxed or dispensed with be the Court in which the action is pending if adherence to it would result in an injustice." I have decided to relax the provisions of Rule 4:25-l(b) because adherence to the provisions of Rule 4:25-l(b) simply would not make sense in terms of the issues which are actually present in this case,** and adherence to the provisions of that cited rule would result in an injustice in the sense that such adherence would pointlessly complicate the issues and simply would not make good procedural sense.

I would point out that, instead of adopting the procedures which are contained in the Order which I am signing today, I might have followed a more traditional, mechanistic approach and **instead simply have dismissed Mr. and Ms. Fernandes' complaint as filed in its entirety for failure to cogently state a claim upon which relief could be granted.** Such a dismissal would have been without prejudice, so that Mr. and Ms. Femandes could still go forward with their basic claims, but they would have to draft, refile and re-serve an amended complaint which more straightforwardly set forth the kinds of claims which are actually at issue in this case. **The procedural contents of the Order which I am signing today are actually designed to avoid putting Mr. and Ms. Femandes through the trouble and expense of recasting their entire pleadings. They were intended to be helpful to the Mr. and Ms. Femandes, and also to be helpful to the other parties, in trying to focus on the issues which are truly present in this case and which are truly capable of being adjudicated in the near future.**

I think that the Order which I am signing today will get this matter back on track and will enable us to proceed towards a trial of the true issues in the case. However, a considerable period of time has elapsed since we had a pretrial conference, and if any party thinks it appropriate to make a motion currently to focus on procedural or substantive issues which the party feels need to be addressed at this time, I am very much open to having such a motion or motions made, and I will promptly address any issues raised in any such motion or motions. I also note that we mentioned during the pretrial conference that the New Jersey Department of Environmental Protection may well not be an appropriate party to this case. I think it might be useful to address that issue promptly, and that could be addressed if Mr. Weeks were to file a motion seeking to dismiss the Department of Environmental Protection from this case.

Very truly yours,
Reginald Stanton
Judge of the Superior Court
Assignment Judge

M

Nelson Fernandes
9 Fox Run
Denville, N.J. 07834

Hon. Reginald Stanton
Morris County Court House
Washington & Court Streets
P.O. Box 910
Morristown, New Jersey 07963-0910 **March 6, 2001**

Re: Fernandes v. Sparta Township Council, MRS-L-3901-99

Objections to Proposed Pretrial Order Prepared by Mr. Laddey

The Proposed Order Denies Plaintiff Due Process

Mr. Laddey's proposed order can never comply with R. 4:25-1(b), which outlines a number of requirements for pretrial orders, some of which are long past.[1] Since the proposed order cannot comply with the rule it represents a denial of due process. [2] Signing that order after being made aware that it is a denial of due process would constitute willful misconduct by being prejudicial to the administration of justice. [3]

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[1] "R. 4:25-1 . . . **requires the pretrial order to be dictated in open court, signed by counsel and the court, and it must recite: the admissions or stipulations of the parties; the factual and legal contentions of the parties; "all claims as to damages * * * and admissions or stipulations with respect thereto, and this shall limit the claims thereto at the trial * * *,"** and a specification of the legal issues to be determined at trial." Muntz v. Newark City Hosp., 115 N.J.Super. 273 (A.D. 06/25/1971).

[2] "This was an unjustifiable trespass upon the rights of defendants Capasso and amounted to an **arbitrary and discriminatory denial to them of the protection of our rules. In short, there was a denial of due process."** Band"s Refuse Removal Inc. v. Borough of Fair Lawn, 163 A.2d 465, 62 N.J.Super. 522 (App.Div. 07/27/1960).

[3] "the Judge engaged in "willful misconduct in office . . . conduct prejudicial to the administration of Justice which brings the

Discovery

Court Rule 4:25-1(b) on pretrial orders, which is the rule that the proposed order is supposed to follow, makes numerous references to discovery issues that shows it should proceed like other civil litigation. [4] R. 4:25-1(b)(2), (3), (4), (5), (6), (7), (9), and 13. **Since these rules compel discovery, the very fact that discovery did not taken place before the pretrial conference, renders that proceeding a nullity because it was conducted in violation of the process due under that rule.** [5] Therefore, the order that might have been rendered at that time is also a nullity.

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judicial office into disrepute." . . We interpret "willful misconduct in office" to mean actions taken in bad faith by the Judge acting in her judicial capacity. "Conduct prejudicial to the administration of Justice" refers to inappropriate actions taken in good faith by the Judge acting in her judicial capacity, but which may appear to be unjudicial and harmful to the public's esteem of the judiciary. Inquiry Concerning a Judge # 94-70. 454 S.E.2d 780 (Sup.Ct.Ga. 03/17/95).

[4] "If an action is brought challenging the validity of an ordinance, and resolution of the challenge turns on disputed factual issues, the case must proceed in the same manner as other civil litigation, **with an opportunity for discovery, pretrial motions and a trial**. See Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158, 292 (1983)." Hirth v. City of Hoboken, No. A-1675-99T2 (App.Div. 02/15/2001).

[5] "**The significant part which discovery plays in our modern civil procedure was strongly emphasized in the leading case of Schlossberg v. Jersey City Sewerage Authority , 15 N.J. 360, 371 (1954). Justice Brennan, speaking for a unanimous court, said that the role of our discovery procedure "in the attainment of the just and proper disposition of an action is not less, but if anything more, important than that of the trial itself, and bench and bar share jointly the responsibility to govern the prosecution of the action accordingly."** (Italics ours) **The trial court steadfastly refused to apply the rules established for the control of our bench and bar** when it permitted 24 witnesses to testify over objection. This was an unjustifiable trespass upon the rights of defendants Capasso and **amounted to an arbitrary and discriminatory denial to them**

Dismissal of the Validity of the Ordinance Without Prejudice

The proposed order that dismisses the validity of the ordinance without prejudice is a denial of due process, since the Supreme Court and Appellate Division requires discovery, pretrial motions and a trial. [6] Since the only pretrial motion was uncontested and the facts were in plaintiff's favor, it would be willful misconduct for the court to deny plaintiff a trial on this issue. Moreover, court rules preclude filing this issue again and also appear to limit the court's power to enlarging the filing time, not dismissing without prejudice to some future date, when plaintiff's claim will be barred. [7]

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of the protection of our rules. In short, there was a denial of due process." Band"s Refuse Removal Inc. v. Borough of Fair Lawn, 163 A.2d 465, 551-52, 62 N.J.Super. 522 (A.D. 1960).

[6] "If an action is brought challenging the validity of an ordinance, and resolution of the challenge turns on disputed factual issues, the case must proceed in the same manner as other civil litigation, with an opportunity for discovery, pretrial motions and a trial. See Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158, 292 (1983)." Hirth v. City of Hoboken, No. A-1675-99T2 (App.Div. 02/15/2001).

[7] Although Rule 4:69-6(a) provides that "no action in lieu of prerogative writs shall be commenced later than 45 days after the accrual of the right to the review, hearing or relief claimed," Rule 4:69-6(c) **authorizes the court to enlarge this period of time "where it is manifest that the interest of Justice so requires."** An enlargement of the time for filing a prerogative writ action is recognized to serve "the interest of Justice" in cases involving "(1) important and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification." Reilly v. Brice, 109 N.J. 555, 558, 538 A.2d 362 (1988) (quoting Brunetti v. Borough of New Milford, (supra) , 68 N.J. at 586). When a case falls within one of these categories, the court may grant even a very substantial enlargement of the time in order to afford affected parties an opportunity to challenge the alleged unlawful governmental action. See, e.g. Damurjian v. Board of Adjustment of Colts Neck, 299 N.J. Super. 84, 97-99, 690 A.2d 655 (App. Div. 1997) (four

Mr. Laddey Has Violated R. 1:4-8

Plaintiff previously moved to have this Court report Mr. Laddey to the proper authority and to disqualify him and his firm because he filed a false certification and also misrepresented a case that could affect the outcome of a motion. Both issues created the appearance of impropriety that justified disqualification.

Now, Mr. Laddey violates R. 1:4-8 by writing to this Court twice for the purpose of submitting the order that is the subject of this objection. His signature on the letters as the "other paper" is advocating the proposed order. Mr. Laddey's factual allegations have evidentiary support, which meet the criteria in R. 1:4-8(3) since a pretrial conference was held without a resulting order. However, his legal contentions with respect to his being able to prepare the pretrial order for this Court is not and cannot be supported by existing law, by a non-frivolous argument for the extension of existing law, or the establishment of new law. Plaintiff's very first objection shows the proposed order is a clear violation by not conforming with the requirements in R. 4:25-1(b). Therefore, Mr. Laddey has violated R. 1:4-8(2). His legal contentions cannot meet the criteria in this Rule because **this Court can only relax or dispense with the rules if adherence would result in an injustice, not create an injustice by denying a litigant due process. R.1:1-2. Band"s Refuse Removal Inc. v. Bor. of Fair Lawn, 163 A.2d 465, 62 N.J.Super. 522 (A.D. 07/27/1960).**

Plaintiff believes that Mr. Laddey's repeated misconduct, twice related to discovery matters, requires this Court to sua

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years); Wolf v. Mayor of Shrewsbury, 182 N.J. Super. 289, 296, 440 A.2d 1150 (App. Div. 1981) (one year), certif. denied, 89 N.J. 440 (1982); Ocean County Bd. of Realtors v. Borough of Beachwood, 248 N.J. Super. 241, 247-48, 590 A.2d 736 (Law Div. 1991) (seven years). Willoughby v. Planning Bd. of Township of Deptford, 703 A.2d 668, 306 N.J.Super. 266 (App.Div. 12/02/1997).

sponte issue an order to show cause why Mr. Laddey and his firm should not be disqualified from representing Sparta. R. 1:4-8(c).

Mr. Laddey is very intent on avoiding discovery, which leads plaintiff to believe that he will violate more rules, which was a concern expressed in plaintiff's motion. The very fact that this court has bent every effort to keep him from a disciplinary review appears to inspire him to new acts of misconduct, thus escalating the initial appearance of impropriety. Moreover, Mr. Laddey's actions also appear to violate a number of Rules of Professional Conduct.

If the court avoids this issue, it will add to the appearance of impropriety created by its previous leniency toward Mr. Laddey.

CONCLUSIONS

None are needed.

Yours truly;

Nelson Fernandes

CC: Mr. Laddey

Brian Weeks

N

Superior Court of New Jersey
Morris/Sussex Vicinage
February 20, 2001

Brian M. Laddey, Esq.
Laddey, Clark & Ryan
60 Blue Heron Road
Sparta, New Jersey 07871-2600

Re: Fernandes, et al. V. Sparta Township Council, et al,
Docket No. MRS-L-3901-99

Dear Mr. Laddey:

I have received your letter of February 13.

You may submit a proposed form of order which you think reflects the statements which I made in open Court on March 29, 2000. Your should submit that under the five-day rule. When I have received that proposed form of order, **and when I have had the benefit of any comments which Mr. Fernandes or Mrs. Fernandes may wish to make, I will decide whether to enter the proposed order.**

Very truly yours,
Reginald Stanton
Judge of the Superior Court
Assignment Judge

Copy to: Case File
Mr. Nelson Fernandes
Ms. Joan Fernandes

O

Laddey, Clark & Ryan
60 Blue Heron Rd.
Sparta, N.J. 07871
(973) 729-1224

Feb. 13, 2001

Hon. Reginald Stanton, A.J.S.C.
Superior Court of N.J.
Morristown, N.J. 07963

Re: Fernandes v. Township of Sparta, Doc. No. MRS-L-3901-99

My Dear Judge Stanton:

I am in receipt of the Order Your Honor entered in the above matter on Feb. 4, 2001 denying Plaintiff's motion. In that order you indicate that Plaintiff's Motion for a stay pending appeal is denied and that discovery shall go forward.

On March 29, 2000, Plaintiff and I appeared before Your Honor for a Case Management Conference. My notes indicates that Your Honor stated at that time that in the event the Appellate Division denied Plaintiff's Interlocutory Appeal, Your Honor would enter an Order treating the Complaint as a request to compel the Township of Sparta to acquire a fifty-foot buffer around the well and pay fair market value, as well as to compel the Township to take steps to close down or divert the drainage pipe. My notes further indicate that you would then give the Township of Sparta time to respond, allowing the Township either to do what was requested or to take a position that they would not do so. My notes further indicate that the Order would dismiss the suit with regard to the zone changes without prejudice with instructions to plaintiff to obtain the services of a Planner to support Plaintiff's request for a zone change.

I am not certain that my notes accurately reflect Your Honors comments on March 29, 2000. It does appear, however, that the further Order of the Court indicated at the Case Management Conference on March 29, 2000 **should be entered at this time prior to the commencement of discovery, so as to form the parameters of discovery.**

If your honor wishes, I would be happy to prepare a proposed form of Order embodying your comments from the bench on March 29, 2000.

I thank you for your cooperation and await hearing from Your Honor's Chambers with regard to how you wish me to proceed.

Respectfully yours, Brian M. Laddey

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Laddey, Clark & Ryan
60 Blue Heron Rd.
Sparta, N.J. 07871

	:	SUPERIOR COURT OF NJ
Nelson & Joan Fernandes,	:	Law Division
vs.	:	Docket MRS – L –3901-99
Sparta Township Council,	:	Civil Action
Et al.	:	ORDER

THIS MATTER having been opened to the Court by Laddey, Clark & Ryan, attorneys for Sparta Township Council, Sparta Township Manager, and Sparta Township Engineer, Brian M. Laddey, Esq. Appearing, on **a cross-motion seeking to deny the plaintiff's motion and enlarge the time for filing an answer**; and Nelson Fernandes, Pro Se, appearing on his own motion and in opposition to the cross-motion; and the Court having considered the papers submitted in support of and in opposition to the motion:

IT IS on this **17 day of March, 2000** ORDERED:

1. The **plaintiff's motion is denied in its entirety**.

2. The defendants Sparta Township Council, Sparta Township Manager, and Sparta Township Engineer are granted an enlargement of time to cure the late service of their answer and the answer filed and served shall be deemed timely as of January 29, 2000.

3. A copy of this Order shall be served upon all parties within seven (7) days of its receipt by counsel for defendants, Sparta Township Council, Sparta Township Manager, and Sparta Township Engineer.

Signed by Hon. Reginald Stanton, A.J.S.C.

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Laddey, Clark & Ryan
Attorneys at Law
60 Blue Heron Rd.
Sparta, N.J. 07871
(973) 729-1224

Feb. 10, 2000

Hon. Reginald Stanton, A.J.S.C.
Superior Court of N.J.
P.O. Box 910
Morristown, N.J. 07963

Re: Fernandes v. Township of Sparta
Docket No. MRS-L-3901-99

Dear Judge Stanton:

I am enclosing a copy of a complaint which has been filed in the above-referenced matter, as well as answers filed on behalf of the Defendants, Department of Environmental Protection, and Township of Sparta, et al. Plaintiffs are appearing pro se.

Since **the complaint is somewhat unclear as to the nature of the allegations and relief sought**, I would respectfully request that this matter be scheduled for a Case Management Conference with Your Honor, **prior to the engagement of discovery**. I feel such a conference would be very helpful in **narrowing the issues and expediting the discovery process.**

I thank you for your courtesies and consideration and await hearing from Your Honor.

Thank you for your cooperation.

Very truly yours,
Brian M. Laddey